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This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

4 No. 223 SSM 45
Todd Schosek, as Administrator of
the Estate of Jesse J. Schosek,
Deceased, and Kelly Schosek, as
Administrator of the Estate of
Carol L. Schosek, Deceased,
 Appellants,
 v.
Amherst Paving, Inc., et al.
 Respondents.

 Submitted by Michael L. Kobiolka, for appellant Todd
Schosek.

 Submitted by Michael G. Cooper, for appellant Kelly
Schosek.

 Submitted by Brian MacDonald, for respondent Amherst
Paving, Inc.

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On review of submissions pursuant to section 500.11 of the Rules,
order, insofar as appealed from, reversed, with costs, and that
part of defendant Amherst Paving, Inc.'s motion that sought
summary judgment dismissing the complaint against it denied. A
triable issue of fact exists as to whether Amherst Paving created
or exacerbated a dangerous condition. Chief Judge Kaye and
Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided December 17, 2008